Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Forbearance Under	)	**WC Docket No. 05-170**
47 U.S.C. § 160(c) from Application of	)	
Unbundling Rules that Limit Competitive	)	
Alternatives	)	

REPLY COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY

Cincinnati Bell Telephone Company LLC (CBT) hereby submits these Reply Comments regarding the Petition for Forbearance filed by XO Communications, Inc., Birch Telecom, Inc., BridgeCom International, Inc., Broadview Networks, Eschelon Telecom, Inc., NuVox Communications, Inc., SNiP LiNK LLC, and Xspedius Communications, Inc. (collectively, the Petitioners).[1]

I. INTRODUCTION

The comments filed on September 12, 2005, in this proceeding primarily address circumstances faced by competitive local exchange carriers (CLECs) operating in the largest incumbent local exchange carrier (ILEC) markets. Not surprisingly, the comments generally ignore the circumstances in other markets. As a mid-size, independent ILEC facing competition from CLECs in its market,[2] CBT feels compelled to file reply comments specifically to address the impacts that forbearance from the enhanced extended links (EELs) eligibility criteria could have on smaller ILECs like CBT.

[1] *XO Communications, Inc., et al. Petition for Forbearance Under 47 U.S.C. § 160(c) from Application of Unbundling Rules that Limit Competitive Alternatives*, WC Docket No. 05-170, Public Notice, DA 05-2003 (rel., July 13, 2005).
[2] CBT provides local exchange service in the greater Cincinnati area, which encompasses Southwestern Ohio, Northern Kentucky and Southeastern Indiana.

II. FORBEARANCE FROM THE EEL ELIGIBILITY CRITERIA WILL NOT ENHANCE COMPETITION AND IS NOT IN THE PUBLIC INTEREST

The Petitioners contend that the EEL eligibility criteria are unnecessary because the Commission's rules now explicitly prohibit the use of unbundled network elements (UNEs) to provide exclusively long distance service. As several parties explained in their comments regarding the petition, this prohibition by itself does not eliminate the need for the EEL eligibility criteria.[3] The criteria serve as an objective test to determine whether CLECs are inappropriately obtaining EELs for exclusively long distance services. Without these objective criteria, there would be no effective means for ILECs to ascertain whether CLECs were gaming the system by purchasing EELs rather than special access. If the eligibility criteria are eliminated, ILECs would be at the mercy of the CLECs' claims and would have no recourse other than using the state dispute resolution process to file complaints against CLECs believed to be violating the rule. (It is not even clear that the dispute resolution process is available for this purpose.) However, with the eligibility criteria, certification, and auditing process established in the current rules, a clear system exists for policing compliance. Moreover, the audit process established in the rules ensures that a CLEC that has legitimately certified that it meets the criteria would incur no expenses as a result of an audit because the challenging ILEC would be responsible for all audit costs if the CLEC were found to be in compliance.

The eligibility criteria serve a two-fold purpose, first and foremost they are a deterrent against inappropriate gaming. Much like other rules or laws that govern society, bad actors may be more likely to break the law if they believe no one is around to catch them. However, where the chance of getting caught looms, even remotely, at least

[3] BellSouth at P 12; Verizon at p. 17; Qwest at pp. 8-9.

some of those who might otherwise ignore the law will instead comply with it rather than risk being caught. A small ILEC like CBT, with limited resources to pursue independent action against a CLEC suspected of using EELs for long distance, must rely primarily on this deterrent effect. If the criteria are eliminated, a company like CBT could see a considerable negative impact on its special access revenue as use of EELs (both new orders and conversions) would likely increase and CBT would have no basis on which to challenge the increased EEL activity. Second, the auditing provisions that accompany the criteria enable an ILEC that has the resources to undertake an audit of suspected abuse with some assurance that the objective criteria can be easily verified by the auditors without undue time and expense.

The Commission determined in its Triennial Review Order that the EEL eligibility criteria are necessary to prevent gaming and the court found the criteria to be reasonable.[4] Nothing has occurred to change the basis for those decisions. The suggestion of Gillette Global Network, Inc., *et al*[5] that the mergers of SBC/AT&T and Verizon/MCI remove any concerns regarding conversion of special access to lower priced UNEs does not support elimination of the EEL eligibility criteria. Although CBT cannot speak for other ILECs about whether these mergers remove the risk of CLECs engaging in regulatory arbitrage by converting long distance special access circuits to EELs, it can attest that these impending mergers do not lessen this risk for CBT. Whether AT&T and MCI are owned by SBC and Verizon, respectively, makes no

[4] *Triennial Review Order*, 18 FCC Rcd 16978, ¶¶ 591, 595 (2003); *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. cir. 2004) *(USTA II)* *cert. denied*, 125 S.Ct. 313, 316, 345 (2004)..

[5] Gillette Global Network, Inc. d/b/a Eureka Networks, McCleodUSA, Inc., Mpower Communications Corp., PacWest Telecomm, Inc., TDS Metrocom, LLC, and US LEC Corp. at pp. 11-12.

difference to CBT's situation. Regardless of the parent company of the CLEC, CBT is susceptible to conversion of special access to EELs for long distance use.

CBT believes that the potential harm resulting from the inevitable gaming that would occur if the EEL eligibility criteria are eliminated would exceed any benefit that might inure to CLECs (e.g., CLEC provision of VoIP services) if they did not have to satisfy the criteria in order to be able to utilize EELs. The EEL eligibility criteria do not put an unreasonable burden on the CLECs, but they do provide a relatively simple and cost effective means of preventing abuses that would otherwise erode special access. Therefore, CBT submits that retention of the EEL eligibility criteria is in the public interest.

III. CONCLUSION

For the foregoing reasons, CBT urges the Commission to reject the Petitioners' request to forbear from applying the EEL eligibility criteria.

Respectfully submitted,

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October 12, 2005

CERTIFICATE OF SERVICE

I hereby certify that, on the 12th day of October 2005, I served a copy of the forgoing Reply Comments of Cincinnati Bell Telephone Company upon each of the parties on the attached service list via First Class Mail, postage prepaid or via electronic filing.

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